

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Freedom Homes of the QCA,
Petitioner-Appellant,

v.

Davenport City Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-103-1143
Parcel No. F0036-01

Docket No. 09-103-1144
Parcel No. C0061-06

Docket No. 09-103-1145
Parcel No. G003-02

Docket No. 09-103-1146
Parcel No. H0040-06A

On April 14, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Freedom Homes of the QCA was represented by Jerry L. Mendoza and submitted evidence at hearing in support of its petition. The Davenport City Board of Review designated City Attorney Tom Warner as its legal representative and submitted evidence in support of its decision. The Board of Review participated by telephone. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Freedom Homes of the QCA, owner of properties located at 706 East 10th Street, 720 East Locust Street, 925 and 910 Marquette Street, Davenport, Iowa, appeals from the Davenport City Board of Review decision reassessing its properties.

Freedom Homes protested to the Board of Review under Iowa Code section 441.37(1)(c) claiming the properties are exempt under section 427.1(8). In response to the protest, the Board of Review notified Freedom Homes the January 1, 2009, assessment would not change.

Freedom Homes then filed an appeal with this Board on the same ground. Freedom Homes seeks total exemption on all four properties.

Jerry Mendoza, Treasurer for Freedom Homes, testified at hearing that Freedom Homes leased property from Sandra Cline, the President/CEO for Freedom Homes. The four subject properties are used for individuals, or "clients," that are without a place to stay. Essentially, anyone who cannot afford a consistent place to stay is eligible to reside at the properties, as long as they abstain from drugs and alcohol. The properties are primarily used for people who are no longer able to stay in homeless shelters, as well as service men and women. Family members of these individuals are also welcome. Freedom Homes also works with parole services and has ties to local corrections services who send individuals to its residences for placement after release from a state facility.

The clients are mostly responsible for their own food; they do not have to pay for any utilities. If they cannot afford food, Freedom Homes will supply food. Freedom Homes also will assist in helping the clients find and retain employment, and it provides transportation for the clients to AA meetings and other program meetings if requested. The clients provide no service or labor for Freedom Homes in return for its services.

The Board of Review argues that lease agreements require all clients to pay rent to Freedom Homes, which is then required to funnel lease payments to Sandra Cline personally. Testimony indicates all clients are requested to pay rent for their occupancy based on a percentage of their monthly income not to exceed \$350. But both Mendoza and Sandra Cline candidly testified regarding the rent arrangement and lease agreements. They stated that Freedom Homes may collect some rent every month, but the rent provisions of the leases have never been invoked or enforced. In short, if individuals are unable to pay in full or any part of the rent, they will not be asked to leave. Freedom Homes' clients generally do not have the means to pay and are not required to; currently only four of the ten "heads of households" pay the entire \$350. We find lease agreements that are never enforced

do not indicate intent for pecuniary profit. Any rent received by Freedom Homes or Sandra Cline is put toward its operations, and testimony indicates monthly rental income from the Freedom Homes properties is rarely enough to cover monthly expenses.

Mendoza stated the subject properties have been exempt in prior years and nothing has changed. Mendoza indicated that Freedom Homes does not make a profit. Although Freedom Homes' properties list Sandra Cline as the owner, she takes part in operating Freedom Homes and uses any funds from rent to pay bills, buy food, cover transportation and other Freedom Homes expenses.

The Board of Review argues that because leases exist on the properties between Sandra Cline and Freedom Homes that require it to pay her monthly, the operation of the organization realizes a pecuniary profit for Sandra Cline. We note the lease between the parties requires Freedom Homes to pay monthly rent on a couple of the properties up to a certain total amount (for example: \$50,000 on one of the properties) at which point the property's title transfers to Freedom Homes. This provision, however, has essentially been waived by Cline because rarely, if ever, has Freedom Homes had money above its operating expenses to pay the lease. We find, as argued by Mendoza, that Sandra Cline is Freedom Homes and Freedom Homes is Sandra Cline. The fact that a lessor/lessee relationship exists does not bring cause for the revocation of the exemption.

Sandra Cline testified that based on a life changing event, she promised to help others and used her personal real estate for charitable housing. The structure of the corporation was organized by her attorney.

Cline testified that she does not make a profit and the property is a total charitable operation. Cline stated that in her will, all property goes to Freedom Homes. Although Freedom Homes does not receive federal or state government support funds, they do work with local government to receive funds and for the placement of individuals seeking shelter. Mendoza and Cline both testified that Freedom Homes relies on contributions or donations it occasionally receives from the public and from

area businesses. In addition, Cline testified that she and Mendoza often use their own social security funds along with rent from other for-profit rental properties to keep Freedom Homes viable.

Cline also noted that a carriage house, which is on part of the property at 706 East 10th Street, has an actual tenant. However, that rent is used to pay for the cost of the main portion of the house, which is used by Freedom Homes. There was no testimony that this rent equated to market rent. Additionally, the carriage house is not separately assessed from the other improvements on that property. In addition to the carriage house, Cline also has other rental properties (not part of this appeal) that generate income/revenue. But unlike these other rental properties, the carriage house is still not operated with intent for pecuniary profit. The money from the carriage house is used to operate Freedom Homes because Freedom Homes does not make a profit. Furthermore, Cline testified that money from her other rental properties is often used to operate Freedom Homes.

Rebecca Eiting, Davenport City Assessor, testified that the four properties had been exempt for prior years. Eiting stated that the property at 706 East 10th Street was vacant at the time she inspected the property; therefore, she determined that the property should be taxable. She did not inspect the other properties but removed the exemption for all of them. Eiting also testified that she had not received income information to determine if the organization was, in fact, making a profit.

After reviewing all the evidence, we find the Freedom Homes has proved the four properties as of January 1, 2009, should continue to be exempt. We find that the Board of Review erred in revoking the exemption.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal

Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In an exemption case, exemption statutes are to be strictly construed and any doubts about the exemption are resolved in favor of taxation. *Care Initiatives v. Bd. of Review of Union County*, 500 N.W.2d 14, 16-17 (Iowa 1993). A party claiming the exemption has the burden of proof. *P'ship for Affordable Housing, Ltd. P'ship Gamma v. Bd. of Review*, 550 N.W.2d 161, 164 (Iowa 1996). The Iowa Supreme Court recognizes a broad definition of the term "charitable" as used in section 427.1(8). *See Care Initiatives*, 500 N.W.2d at 17; *Richards v. Iowa Dep't of Revenue*, 414 N.W.2d 344, 351 (Iowa 1987).

An entity must prove the following three factors by a preponderance of the evidence to establish the tax-exempt status of its property: (1) the entity was a charitable institution at the time of the claim exemption, (2) the entity did not operate the facility with a view to pecuniary profit, and (3) the actual use of the facility was solely for the appropriate objects of the charitable institution.

Carroll Area Child Care Ctr., Inc. v. Carroll County Bd. of Review, 613 N.W.2d 252, 254-55 (Iowa 2002).

The Board finds Freedom Homes was a charitable organization at the time of the assessment, the entity is not operated with a view or intention for pecuniary profit, and the four properties are used solely for the appropriate objects of the organization.

Freedom Homes' mission includes:

- (a) To provide housing for men and women that are in need of assistance and desire to change their lives for the better;
- (b) To assist men and women with recovery issues such

as drugs, alcohol, sexual addiction, and/or the recent release from prison or other institutions or facilities, and/or are in need of more structure in their lives; and (c) To assist men and women through a difficult time in their lives by providing ministry to change their lives through Christ.

But Freedom Homes is providing more than just housing for its clients, it provides services that are offered on a gratuitous or partly gratuitous basis. *Richards*, 414 N.W.2d at 351. Charity is not limited to providing assistance for the needy. *Id.* The record shows Freedom Homes provides housing, food, transportation, and other services as needed to assist its clients in becoming, and staying, productive members of the community. These services are available regardless of an individual's ability to pay. Tax exempt status is not lost because some individuals could pay for the organization's services. *South Iowa Methodist Homes, Inc. v. Board of Review*, 173 N.W.2d 526, 531 (Iowa 1970).

The Board of Review contends that Sandra Cline, and not the charitable organization Freedom Homes, is the true owner of the property. That, in addition to the lease agreements, causes the Board of Review to doubt whether Freedom Homes meets the requirement for exemption. The Iowa Supreme Court has addressed these issues and determined that Iowa Code section 427.1(8) clearly states that "actual use," of the property, as opposed to ownership, is the focus. *See Warden Plaza v. Board of Review of City of Fort Dodge*, 379 N.W.2d 362, 365 (Iowa 1985).

Warden involved a property owner who leased property to a tenant operating as a non-profit, charitable organization. The Court ultimately turned to profit motives, stating that if the owner-lessor is not leasing the property to the charitable institution for profit or personal advantage, the real estate owned by the lessor should be exempt. The term "pecuniary profit" in section 427.1(8) refers to "monetary gain which inures to the benefit of private individuals and is not simply an excess of income over expenses." *Bethesda Found. v. Board of Review*, 453 N.W.2d 224, 228 (Iowa Ct. App. 1990). Despite the lease provisions, Cline has demonstrated that she does not lease property to Freedom Homes for profit or personal monetary gain. While Mendoza and Cline live in residences used by

Freedom Homes, the facts of this case show there is no monetary gain inured to Cline. Any personal advantage to Cline is incidental to the actual uses of the Freedom Homes properties.

PAAB notes that although a fraction of the property at 706 East 10th Street has a carriage house that is rented, the assessment record for 706 has only a total assessed value for improvements. We note 706 East 10th Street is classified as residential realty and is being used primarily for residential purposes; therefore the exemption should not be reduced proportionally. *See American Legion, Hanford Post 5 v. Cedar Rapids Bd. of Review*, 646 N.W.2d 433, 435 (Iowa 2002) (citing Iowa Code § 421.1(14)(a)).


We further note that when charitable property is vacant to be renovated or repaired, it is exempt during the renovation period. The words “under construction” in Iowa Code § 424.1(9) includes renovations and repairs to charitable property. *Des Moines Coalition for the Homeless v. Des Moines City Bd. of Review*, 493 N.W.2d 860, 862 (Iowa 1992). The exemption for 706 East 10th Street should not have been revoked on this basis.

For the foregoing reasons, we exempt the assessments of the Freedom Homes of QCA properties determined by the Board of Review. The Appeal Board determines that the property assessment as of January 1, 2009, for all four properties is exempt.

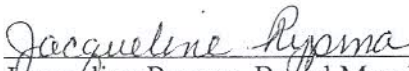
THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Davenport City Board of Review, is exempt.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Scott County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 21 day of May, 2010.


Richard Stradley, Presiding Officer


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

Copies to:

Jerry Mendoza, Director
Freedom Homes of the QCA
720 East Locust
Davenport, IA 52803
APPELLANT

Tom Warner
226 W 4th Street
Davenport, IA 52801
ATTORNEY FOR APPELLEE

Roxanna Moritz
Scott County Auditor
600 W. 4th St.
Davenport, IA 52801

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-21</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	